

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of the application of Affinity Fund,)
Inc., for a certificate of service to provide)
intrastate telecommunications services.)

CASE NO. TA-92-12

APPEARANCES: Willard C. Reine, Attorney at Law, 314 East High Street,
Jefferson City, Missouri 65101, for Applicant.

Carl W. Hibbert, Attorney at Law, Smith, Debnam, Hibbert &
Pahl, P. O. Box Drawer 26268, Raleigh, North Carolina 27611,
for Applicant.

Randy Bakewell, Assistant Public Counsel, P. O. Box 7800,
Jefferson City, Missouri 65102, for Office of the
Public Counsel and the Public.

Lee Tieman, Assistant General Counsel, Missouri Public Service
Commission, P. O. Box 360, Jefferson City, Missouri 65102,
for the Staff.

HEARING

EXAMINER: Mark A. Grothoff

REPORT AND ORDER

On July 25, 1991, Affinity Fund, Inc. (Applicant) filed a verified application for a certificate of service authority authorizing it to provide intrastate interexchange telecommunications services. Applicant also requested classification as a competitive company. Further, Applicant requested a waiver of certain Missouri statutes and Commission rules.

On August 16, 1991, the Commission issued an Order and Notice directing its Executive Secretary to send notice of the application. On August 5, 1991, the Office of the Public Counsel (OPC) filed a motion requesting a hearing. On October 25, 1991, OPC requested permission to withdraw its motion on the issue of the waiver of 4 CSR 240-33.030, but maintained its motion on the issue of payphone access surcharges. On October 30, 1991, Applicant filed a response to OPC's motions, agreeing to the

conditions asked for by OPC. On November 1, 1991, OPC, based upon Applicant's assurances, requested permission to withdraw its motion on the issue of payphone access surcharges. On November 8, 1991, the Commission issued an order permitting OPC to withdraw its motion for hearing.

No applications to intervene nor other motions for hearing were filed. On December 23, 1991, the Staff of the Commission (Staff) filed a memorandum recommending the Commission approve the application.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

Applicant requests authority to provide intrastate interexchange telecommunications services in the State of Missouri pursuant to Section 392.440, RSMo (Cum. Supp. 1990). Applicant also requests that the Commission classify it as a competitive telecommunications company, pursuant to Section 392.361, RSMo (Cum. Supp. 1990).

The requirement of a hearing has been fulfilled when all those having a desire to be heard are offered such an opportunity. In this case, notice was sent by the Executive Secretary of the Commission to any persons or entities known to the Telecommunications Department of the Commission to be rendering identical or similar services within the service area proposed by the application, as well as to each telephone company rendering local exchange service in Missouri. Interested persons or entities were directed to intervene on or before September 16, 1991. Since no proper party or government entity filed an application to intervene and neither the Staff nor OPC requested a hearing, the Commission determines that an oral hearing is not necessary and the Applicant may submit evidence in support of its application by verified statement. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

The Commission finds that Applicant is a Florida corporation authorized to do business in the state of Missouri, with its principal office or place of business located at 675 N. Brookfield Road, Brookfield, Wisconsin. The Commission further finds that Applicant has filed current financial information and a brief description of the type of service it proposes to provide, and has agreed to comply with all applicable rules and regulations of the Commission and any terms and conditions which the Commission may impose. By memorandum filed herein, Staff recommends that the Commission grant Applicant a certificate of service authority.

Based upon the verified statements of Applicant and the recommendations of Staff, the Commission finds that Applicant is qualified to perform the service proposed. Pursuant to Sections 392.440 and 392.530, RSMo (Cum. Supp. 1990), the Commission will assume that additional competition in the intraLATA and interLATA toll markets is in the public interest. The Commission does not deem it necessary to determine a public need for each reseller's services as the market would eliminate any reseller for which there is no public need. Consequently, pursuant to Section 392.440, RSMo (Cum. Supp. 1990), the Commission finds that it is in the public interest to grant Applicant a certificate of service authority to provide intrastate interexchange telecommunications services.

Applicant proposes to resell competitive long distance services. By its recommendation filed herein, Staff states that these services are the same as services which were classified as competitive in Case No. TO-88-142, In re the investigation for the purpose of determining the classification of the services provided by interexchange telecommunications companies within the State of Missouri (September 15, 1989). Therefore, Staff recommends that the Commission grant Applicant competitive status.

Based upon the verified statement of Applicant and Staff's recommendation, the Commission finds that the services Applicant proposes to offer are competitive and that Applicant should, therefore, be classified as a competitive company. The Commission further finds that the statutory and regulatory requirements waived in

Case No. TO-88-142 for competitive companies and their services pursuant to Section 392.361, RSMo (Cum. Supp. 1990), should be waived for Applicant, as listed hereinafter.

Pursuant to Section 392.470, RSMo (Cum. Supp. 1990), the Commission determines that certain regulatory requirements should be imposed upon resellers authorized to provide telecommunications services in Missouri. Since the Applicant proposes to operate as a reseller of telecommunications services in this state, the Commission finds that the following regulatory requirements should be imposed upon Applicant as reasonable and necessary conditions of certification:

- (1) Applicant is required to comply with reasonable requests by the Staff for financial and operating data to allow the Staff to monitor the intraLATA toll market pursuant to Section 386.320.3, RSMo (Cum. Supp. 1990);
- (2) Applicant is required to file tariffs containing rules and regulations applicable to customers, a description of the services provided and a list of rates associated with the services pursuant to Section 392.220, RSMo (Cum. Supp. 1990), and 4 CSR 240-30.010;
- (3) Applicant is precluded from unjustly discriminating between and among its customers pursuant to Section 392.200, RSMo (Cum. Supp. 1990), and Section 392.400, RSMo (Cum. Supp. 1990);
- (4) Applicant is required by Sections 386.570, RSMo (1986), and 392.360, RSMo (Cum. Supp. 1990) to comply with all applicable rules of the Commission except those which are specifically waived by the Commission pursuant to Section 392.420, RSMo (Cum. Supp. 1990);
- (5) Applicant is required to file a Missouri-specific annual report pursuant to Section 392.210, RSMo (Cum. Supp. 1990), and Section 392.390.1, RSMo (Cum. Supp. 1990);
- (6) Applicant is required, until the Commission orders otherwise, to

submit to the Staff on a confidential basis, quarterly reports showing its percentage of interstate use and intrastate interLATA and intraLATA use pursuant to Section 392.390.3, RSMo (Cum. Supp. 1990);

(7) Pursuant to Section 392.390.3, RSMo (Cum. Supp. 1990), Applicant is required to comply with the jurisdictional reporting requirements as set out in each local exchange company's access services tariff.

Finally, the Commission finds that Applicant should file appropriate tariffs within thirty (30) days of the effective date of this Report and Order. The certificate to be granted herein will become effective only upon approval by the Commission of these tariffs.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

Applicant proposes to provide service to the public as a competitive intrastate interexchange telecommunications company subject to the Commission's jurisdiction pursuant to Chapters 386 and 392, RSMo (Cum. Supp. 1990).

Based upon the verified application of Applicant and the recommendation of its Staff, the Commission has found that Applicant has complied with the Commission's standards pertaining to applications requesting authority to provide intrastate interexchange telecommunications services and is qualified to perform said services. The Commission concludes that additional competition in the intrastate interexchange market is in the public interest and a certificate of service authority should be granted. The Commission also has found that the services Applicant proposes to offer are competitive. Therefore, the Commission concludes that Applicant should be classified as a competitive company pursuant to Section 392.361, RSMo (Cum. Supp. 1990).

IT IS THEREFORE ORDERED:

1. That Affinity Fund, Inc. be hereby granted a certificate of service authority to provide intrastate interexchange telecommunications services in

Missouri. This certificate of service authority is subject to the conditions of certification set out herein and shall not become effective until the Commission approves Applicant's tariffs.

2. That Affinity Fund, Inc. be hereby classified as a competitive telecommunications company for which the effect of the following statutory and regulatory requirements shall be waived:

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| Section 392.240(1) | Commission ratemaking |
| Section 392.270 | Property valuation |
| Section 392.280 | Depreciation accounts |
| Section 392.290 | Financing |
| Section 392.310 | Issuance of Securities |
| Section 392.320 | Issuance of Securities |
| Section 392.330 | Issuance of Securities |
| Section 392.340 | Corporation reorganization |
| 4 CSR 240-30.010(2)(C) | Copies of rate schedules |
| 4 CSR 240-30.060(5)(B-O) | Rate case requirements |
| 4 CSR 240-32.030(1)(C) | Access line and grade of service complaints |
| 4 CSR 240-32.050(3) | Information at business offices |
| 4 CSR 240-32.050(4) | Telephone directories |
| 4 CSR 240-32.050(5) | Call interception |
| 4 CSR 240-32.050(6) | Telephone number changes |
| 4 CSR 240-32.070(4) | Coin telephone |
| 4 CSR 240-33.030 | Service and billing practices |

3. That Affinity Fund, Inc. shall file tariffs within thirty (30) days of the effective date of this Report and Order.

4. That nothing contained herein shall be construed as a finding by the Commission of the value for ratemaking purposes of the properties herein involved, nor as an acquiescence in the values placed upon said properties by the Applicant.

5. That Affinity Fund, Inc. shall file with the Commission's Staff on a quarterly basis reports showing its percentage of interstate use and intrastate interLATA and intraLATA use. The first such report shall be filed in the next quarterly period following the effective date of this Report and Order and quarterly thereafter on a confidential basis, unless otherwise ordered by the Commission.

6. That this Report and Order shall become effective on the 27th day of January, 1992.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

McClure, Chm., Mueller, and
Rauch, CC., Concur.
Perkins and Kincheloe, CC.,
Absent.

Dated at Jefferson City, Missouri,
on this 14th day of January, 1992.